

## Merit Systems Protection Board

## § 1201.71

(1) *Substantial evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(2) *Preponderance of the evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(3) *Harmful error.* Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

[54 FR 53504, Dec. 29, 1989, as amended at 56 FR 41748, Aug. 23, 1991]

### § 1201.57 Order of hearing.

(a) In cases in which the agency has taken an action against an employee, the agency will present its case first.

(b) The appellant will proceed first at hearings convened on the issues of:

- (1) Jurisdiction;
- (2) Timeliness; or

(3) Office of Personnel Management disallowance of retirement benefits, when the appellant applied for those benefits.

(c) The judge may vary the normal order of presenting evidence.

### § 1201.58 Closing the record.

(a) When there is a hearing, the record ordinarily will close at the conclusion of the hearing. When the judge allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, however, the record will remain open for as much time as the judge grants for that purpose.

(b) If the appellant waives the right to a hearing, the record will close on the date the judge sets as the final date for the receipt or filing of submissions of the parties.

(c) Once the record closes, no additional evidence or argument will be ac-

cepted unless the party submitting it shows that the evidence was not readily available before the record closed. The judge will include in the record, however, any supplemental citations received from the parties or approved corrections of the transcript, if one has been prepared.

## EVIDENCE

### § 1201.61 Exclusion of evidence and testimony.

Any evidence and testimony that is offered in the hearing and excluded by the judge will be described, and that description will be made a part of the record.

### § 1201.62 Producing prior statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual that is relevant to the evidence given. If the party refuses to furnish the statement, the judge may exclude the evidence given.

### § 1201.63 Stipulations.

The parties may stipulate to any matter of fact. The stipulation will satisfy a party's burden of proving the fact alleged.

### § 1201.64 Official notice.

Official notice is the Board's or judge's recognition of certain facts without requiring evidence to be introduced establishing those facts. The judge, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties may be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

## DISCOVERY

### § 1201.71 Purpose of discovery.

Proceedings before the Board will be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case.